

**1 SCOB [2015] HCD 52****HIGH COURT DIVISION**

(Criminal Revisional Jurisdiction)

Criminal Revision No. 906 of 2010 with  
Criminal Revision No. 907 of 2010 with  
Criminal Revision No. 908 of 2010 and  
Criminal Revision No. 909 of 2010

**Md. Zakir Hussain**

....Convict-petitioner.

-Versus-

**Md. Jalal Khan and another**

....Opposite-parties.

Mr. A.K.M. Shamsuddin with  
Mr. Md. Abu Kawser, Advocates  
.....For the convict-petitioner.

Mr. Saleh Ahmed Patwary, Advocate  
.....For the Opposite-Party No.1  
Mr. Abdullah Al Mamun, D.A.G.  
.....For the State (Opposite-Party No. 2).

Heard on 22.04.2015, 24.04.2015 and 13.05.2015  
Judgment on 21.05.2015.

**Present****Mr. Justice Abu Bakar Siddiquee.****Corroboration of evidence:**

Where bitter enmity in between the parties is admitted some sort of corroboration of the evidence of interested witnesses is required as a rule of prudence. ....(Para 33)

**Presumption against prosecution:**

The prosecution withheld those witnesses who are the other neighbours and the security guard etc. Non-examination of those material witnesses who were able to corroborate the D.W-1, raises a presumption against prosecution that had they been examined in the case, they would not have supported the defence case and benefit of such defect will go the prosecution. ....(Para 34)

**Negotiable Instruments Act, 1881****Subsection (1) of the Section 138:**

A plain reading of subsection (1) of the Section 138 of the Act, 1881 shows that an offence under this section shall be deemed to have been committed, the moment a cheque drawn by a person on an account maintained by him with a bank for payment of any amount of money to another person from out of that account is bounced by the bank unpaid on any of the grounds mentioned therein. Sub-section (1) of section 138 has not made any qualification of the cheque so returned unpaid either post dated given as a security for repayment of the money as alleged by the accused or any other cheque issued by the drawer from encashment currently. The legislature has not made any difference between a post dated cheque issued as security and a cheque issued for encashment currently. I do not see any scope of making any such difference. ....(Para 42)

**Judgment****Abu Bakar Siddiquee, J.**

1. These four rules have been issued at the instance of the same convict-petitioner in four separate criminal revisions for issuing four separate cheques by him. These four Criminal Revisions are taken up together for analogous hearing for the purposes convenience and brevity. The term of four rules are almost similar and same which is as follows:-

2. These four separate Rules were issued calling upon the opposite-party to show cause as to why the impugned judgment and order of conviction dated 22.06.2010 passed by the learned Sessions Judge, Comilla in Criminal Appeal No. 86/2010 affirming the judgment and order dated 13.10.2010 passed by the learned Joint Sessions Judge, 1<sup>st</sup> Court, Comilla in Sessions Case No. 299 of 2006 arising out of C.R. Case No. 138/2006 convicting the accused petitioner under section 138 of the Negotiable Instrument Act, 1881 and sentencing him thereunder to suffer simple imprisonment for 1(One) year and also to pay a fine of taka 2,00,000/- should not be set aside and/or such other order or further order or orders passed as to this Court may deem fit and proper.

3. The prosecution cases of those four criminal cases are also similar and directed against four separate judgments which may briefly be stated as follows:-

One Md. Jalal Khan lodged the petition of complaint against the convict-petitioner before the Magistrate, 1<sup>st</sup> Class, Court No.1, Comilla as complainant alleging *inter-alia* that convict -petitioner Md. Zakir Hussain and D.W-2 Abdus Salam Kachi are known to him who rendering their manpower business conjointly and took a tune of taka 4(four) lac from him with a promise to send him to Taiwan. It has been further alleged that on a subsequent date said Abdus Salam Kachi executed an agreement in favour of complainant on 25.11.2005 at about 9-00 A.M with a stipulation that he will repay the entire amount if they failed to send him in abroad and subsequently as per terms of such agreement the convict-petitioner executed and issued four separate cheques with a view to secure such amount. It has been also alleged that subsequently the convict-petitioner and D.W-2 failed to send the complainant in abroad in due time and as per terms of said agreement. The complainant(O.P-1) presented the cheque before the relevant bank on 03.04.2006 for encashment but the said cheques were bounced due to insufficient of fund on the same day. It has been also alleged that the complainant served a legal notice upon the convict-petitioner with a request to repay the same but the convict-petitioner did not pay the same. Thus, the complainant (O.P-1) filed the case for commission of offence punishable under section 138 of the Negotiable Instruments Act, 1881.

4. On receipt of the petition of complaint, the learned Magistrate examined the complainant (O.P-1) and issued process against the accused-petitioner who appeared before the Court and obtained bail.

5. Thereafter the case record has been transmitted to the Sessions Judge, Comilla for trial who after taking cognizance of the offence transferred the case record to the Joint Sessions Judge, 1<sup>st</sup> Court, Comilla. The learned trial Court on receipt of the record has framed a formal charge against the accused-petitioner after observing all the necessary formalities and read over the same to him whereupon he pleaded not guilty of the offence and claimed to be tried.

6. Thereafter the prosecution adduced as many as 2(two) witnesses in order to prove the charge. On the other hand, the defence examined 5(five) witnesses as D.Ws.

7. On closer of the evidence, the accused-petitioner has been examined under section 342 of the Code of Criminal Procedure whereupon they abjured his guilt.

8. On conclusion of the trial, the learned trial Court found the convict-petitioner guilty of the offence and attributed the order of conviction and sentence as stated above.

9. Against the said order of conviction and sentence, the convict-petitioner preferred these four appeal before the learned Sessions Judge, Comilla who after admitting such appeal allowed the convict-petitioner to go on bail. Subsequently the appeal has been heard and dismissed by the learned Sessions Judge, Comilla.

10. Being aggrieved by and dissatisfied with the aforesaid judgment and order of conviction, the convict-petitioner preferred these revisional applications before this Court and obtained the present Rule.

11. Mr. A.K.M. Shamsuddin, the learned Advocate appearing on behalf of the convict-petitioner strenuously argued that both the Courts below failed to appreciate the evidence on record and also failed to consider the fact that the convict-petitioner was taken away forcibly by the RAB personnel from his house and was constraint to put his signature on those cheques under proper examination the RAB personnel and as such the complainant was not at all a holder thereof in due course. He further adds that the prosecution was failed to prove its case by the reasonable doubt on adducing proper evidence.

12. On the other hand, Mr. Saleh Ahmed Patwary, the learned Advocate appearing on behalf of the Respondent No. 1 submits that all the formalities regarding an offence punishable under section 138 of the Negotiable Instrument Act, 1881 have been complied with duly and as such both the Courts below have rightly attributed the order of conviction and sentence which is liable to be affirmed.

13. Mr. Abdullah Al Mamun, learned Deputy Attorney General appearing on behalf of the Respondent No.2, supported the argument advanced by the learned Advocate for the Respondent No.1.

14. I have heard the learned Advocates for both the parties and perused the materials on record.

15. Let me proceed to examine the evidence on record with a view to testy the veracity of their testimonies.

16. P.W-1 Jalal Khan is the complainant of this case. He deposed that on 25.11.2005 the occurrence had been taken place in his house and D.W-2 Abdus Salam Kachi came to his house on that day and proposed to send him or his younger brother in abroad in lieu of a tune of taka 4,00,000/-. He further deposed that with a view to secure such money the convict-petitioner issued four cheques. He also deposed that subsequently the convict-petitioner failed to send his younger brother in abroad and as a result of which he presented the cheques before the relevant bank for encashment but the same has been bounced on the same day due to insufficient of fund. Thereafter he deposed that he was compelled to issue a legal notice which has been received by him but he did not pay, any heed to it. He produced the cheques in question and legal notices along with postal receipt. He also produced the bounced slips. Thereafter he prays for taking necessity action against the convict-petitioner.

17. In course of cross-examination, it is admitted by him that he filed as many as 4 cases against four cheques. It is admitted by him that he petition of complaint has been written as per his instruction and he failed to avert there as to whether the convict-petitioner took money from him on which date. He further admitted that he has no knowledge about the agreement and he does not know as to who executed the agreement. He also deposed that the convict-petitioner lodged separate F.I.R for recovery of those cheques. He denied the suggestion put to him during the course of cross examination.

18. P.W-2 Billal Khan deposed that both the parties are known to him and on 25.11.2005 at about 9-00 A.M he was present at the drawing room of the complainant (O.P-1) Jalal Khan along with Billal, Sadek, Liaqot, Mamun etc. Thereafter he deposed that the convict-petitioner Md. Zakir Hussain rushed there and issued cheques in their presence with a view to secure the debt.

19. In course of cross-examination, it is admitted by him that he was not well acquainted with accused-petitioner Md. Zakir Hussain. It is also admitted by him that he cannot say as to whether aforesaid convict-petitioner Md. Zakir Hussain filed any case against the P.W-1 Jalal Khan. Thereafter it is admitted by him that he is a driver and attached to RAB as driver. He also admitted that there are many elite person in their locality. He denied the fact that the fact of execution of those cheques by the convict-petitioner Md. Zakir Hussain in the drawing room in the Jalal Khan is a myth and concocted history. He denied the suggestion put to him during the course of cross examination.

20. After examination of the P.Ws, the convict-petitioner has been examined under section 342 of Code of Criminal Procedure wherein he proposed to adduce D.W in this case and accordingly as many as 5 D.Ws has been examined.

21. D.W-1 Kaikobad Sarker deposed that the accused Md. Zakir Hussain is personally known to him and his is his close neighbor. Thereafter he deposed that on 23.11.2005 at about 11-00/11-30 A.M, he came out from his house on hearing hue and cry and saw that some RAB personnel were applying force upon the accused Md. Zakir Hussain for entering into their jeep. Thereafter he deposed that those RAB personnel took the convict-petitioner Md. Zakir Hussain away. Thereafter he deposed that he came to know that the RAB personnel took him to their Feni camp and compelled him to execute some cheques along with an agreement.

22. In course of cross examination, it is admitted by him that convict-petitioner Md. Zakir Hussain has begot two sons and a wife and his residence is by the side of a market wherein as many as 20/30 shops are situated. It is further admitted by him that at the time of taking his away, he alone was present there and none else was present. Thereafter he deposed that he has heard the fact of lodging a G.D against Jalal Khan and Abdus Salam Kachi but he cannot remember the date and number of aforesaid GDE. It is also admitted by him that he cannot say as to whether is there any avertainment in the F.I.R of another case under section 98 of the Code of Criminal procedure as to the fact of taking him away by the RAB personnel. It is also admitted by him that he

cannot say as to whether there is any aversion of such taking away by the RAB personnel in the reply of legal notice. He denied the suggestion put to him during the course of cross examination.

23. D.W-2 Abdus Salam Kachi deposed that the accused petitioner Md. Zakir Hussain is known to him. He further deposed that he along with Zakir Hussain never took any money from the complainant for the purpose of sending any man in abroad. He also deposed that he never execute any agreement against realization of money from the complainant for sending his younger brother in abroad. Thereafter he deposed that the RAB personnel took away the convict-petitioner Md. Zakir Hussain to their camp at Chowmohoni and the RAB personnel compelled him to execute some cheques. He also deposed that that the RAB personnel threatened him to put him in cross-fire and on putting such pressure, they were able to take signature on those cheques along with an agreement.

24. In course of cross examination, it is admitted by him that he is a resident of Dhaka city. He also deposed that the RAB personnel never arrested him and he never went to the RAB Camp. He also deposed that he cannot say what is the rank and status of commander Quddus. It is also admitted by him that he never filed any case or against the RAB personnel in connection of fact of alleged exerting pressure and able to execute the cheques by the convict-petitioner Md. Zakir Hussain and he never informed the matter to the higher authority of RAB personnel. Thereafter it is admitted by him that he has not taken any legal action against the RAB personnel for exerting the pressure upon the convict-petitioner Md. Zakir Hussain. He denied the suggestion put to him during the course of cross examination.

25. D.W-3, Akter Hossain deposed that the convict-petitioner is known to him who is his brother-in-law. Thereafter he deposed that he knew the complainant Md. Jalal Khan whenever convict-petitioner Md. Zakir Hussain was taken to RAB camp at Choumohoni. Thereafter he deposed that convict-petitioner Md. Zakir Hussain is being supplied food to his business institution and an allegation was arose in between them about the fact of supplying such food. Thereafter he deposed that on 23.11.2005 at about midnight the RAB personnel took the convict-petitioner Md. Zakir Hussain to their camp. Thereafter he deposed that he had heard such news over telephone and rushed to the house of convict-petitioner Md. Zakir Hussain wherein he saw RAB personnel. He also deposed that wife of Zakir Hussain informed him about such news. Thereafter he deposed that next morning they communicated with the RAB personnel at Choumohoni Camp and he himself went to that camp along with his brother-in-laws wherein he found that the complainant and one Ismail were present there and he also found a person who wrote out on agreement and thereafter the RAB personnel insisted them to execute those written stamps paper and they were compelled to execute the stamp paper for the fear of cross fire. He also deposed that the aforesaid stamp papers are now available in court's file and there is his signature on those stamp papers and his brother-in-law also was compelled to execute the same in the same compulsion. He further deposed that they were able to rescue the convict-petitioner on execution of those papers. He further deposed that that the RAB personnel threatened them and resisted them to lodge information in elsewhere including the police station and they also insisted them to deposit aforesaid money in the account of the complainant. He finally deposed that all those occurrence are taken place in Feni and Chowmohoni.

26. In course of cross examination, it is admitted by him that accused-petitioner is his brother-in-law and he was taken to custody in a case instituted by the complainant. Thereafter it is admitted by him that they lodged no GDE stating the fact of apprehension of the accused by the RAB personnel. Thereafter he deposed that he knew about the fact of GDE lodged by the accused persons against the complainant for the first time when he came forward before the Court with a view to depose in this case, but he cannot say about he recital of such GDE and that he cannot say as to whether there was any aversion regarding apprehension of the accused by the RAB personnel in the reply to the legal notice. It is also admitted by him that he or his brother in law made no allegation regarding apprehension by the RAB personnel. He denied the suggestion put to him during the course of cross examination.

27. D.W-4 Meheraj Hossain deposed that both the parties are known to him and he saw the complainant Md. Jalal Khan in the RAB office at Choumohoni for the first time. Thereafter he deposed that convict-petitioner Md. Zakir Hussain is his brother-in-law and on 23.11.2005 at about 11-30 P.M. his sister informed him that some RAB personnel came to their house and took away his brother-in-law (convict-petitioner) to their Camp. Thereafter he deposed that at one point of time RAB personnel called them to appear before them at

Choumohoni Camp. Thereafter he deposed that on 24.11.2005 they went to RAB Camp at Choumohoni and saw the complainant and one Ismail to sit there. He also deposed that RAB personnel namely Abdul Quddus and Abdus Salam called them and asked to execute two separate stamp papers wherein he and Akter put their signature at the behest of RAB personnel and they obtained those signatures under threat and coercion. Thereafter he deposed that the RAB personnel disclosed the fact that they will be released the convict-petitioner whenever the convict-petitioner will bring his cheque book and soon after execution of the cheque. Thereafter he deposed that they brought the cheque book and convict-petitioner Md. Zakir Hussain put his signature on four cheques under pressure and threat of the RAB personnel who also took their photos.

28. In course of cross examination, it is admitted by him that convict-petitioner Md. Zakir Hussain is his brother-in-law who was taken by the RAB personnel and also released after execution of stamp paper and cheques but they made no allegation about such threat and pressure in anywhere. He also deposed that they made no allegation against the RAB personnel to their higher authority. He cannot say as to whether there was any avvertment in the reply of legal notice as to the fact of exertion of pressure upon the convict-petitioner and execution of cheque under such pressure. He denied the suggestion put to him during the course of cross examination.

29. D.W-5 Md. Salim Khan deposed that the accused-petitioner is known to him and he is the close neighbor of the convict-petitioner. He further deposed that on 23.11.2005 at about mid-night he found some RAB personnel to stoke their jeep by the side of the convict-petitioner's house and also found some RAB personnel to enter in the house of the convict-petitioner who apprehended the convict-petitioner and took away him to their camp. Thereafter he deposed that he inquired about the matter and came to know that the convict-petitioner Md. Zakir Hussain had a dispute as against his business partner and as such RAB personnel took him away in the instance of the complainant. He further deposed that he came to know that RAB personnel took signature upon cheque and agreement on exerting pressure.

30. In course of cross examination, it is admitted by him that convict-petitioner Md. Zakir Hussain is not a voter in his ward and he has been residing in his house. Thereafter he deposed that he entered into the house of convict-petitioner Md. Zakir Hussain and asked the wife of Md. Zakir Hussain about he cause of apprehension. Thereafter he deposed that he has not informed the matter in local police camp or the police station. He further deposed that he cannot say as to whether convict-petitioner Md. Zakir Hussain lodged the case of GDE against the complainant and Ismail. He further deposed that he cannot say as to whether the complainant and his partyman exerted the pressure upon Abdus Salam and Ismail. He cannot say as to whether there was any avvertment regarding such apprehension by RAB in the reply to the legal notice. He denied the suggestion put to him during the course of cross examination.

31. On perusal of the evidence of the P.W. 1 and 2, it appears that the convict-petitioner issued such security cheques after entering into an agreement of sending the complainant in abroad in lieu of such cheques money on condition to the effect that in case of any failure, the complainant would be at liberty to encash the money from the relevant Bank. It further appears that the cheques in question were issued on sitting in the drawing room of the complainant in presence of the P.W-2 and others. On the other hand, the defence denied such fact and counter claimed that the complainant being the muscle man took away the convict-petitioner to the RAB Office with the help of RAB personnel and compelled him to execute the cheques and the agreement by exerting pressure upon him. On perusal of the claim and counter claim, it appears that the execution of those cheques is an admitted fact. Now it is the defence who is to prove the under what fact and circumstance he put signature on those cheques. The defence in order to prove such fact has set out a long avvertment regarding execution of cheques as defence case.

32. Let me proceed to examine the evidence on record and see therefrom as to howfar the defence has been able to prove the defence case of exerting pressure by the RAB personnel and thereby compelled the convict-petitioner to put his signature on those cheques.

33. The convict-petitioner has adduced five witnesses with a view to prove his aforementioned defence case that he was taken to the RAB Camp wherein he was forced to execute the disputed cheques and agreement. The D.W-1 Kaikobad Sarker and D.W-5 Selim Khan are the close neighbor of the convict-petitioner. D.W-2 Abdus

Salam Kachi and D.W-3 Akter Hossain are the brother-in-law of the convict-petitioner and P.W-2 is business partner of the convict-petitioner and signatory of the agreement. Thus all those witnesses are interested and interrelated. It is a settled proposition that where bitter enmity in between the parties is admitted some sort of corroboration of the evidence of interested witnesses is required as a rule of prudence. Let me now proceed to see as to how far those witnesses are able corroborated each other on material particulars.

34. Only the D.W-1 Kaikobad Sarker came before the Court to depose that he saw the occurrence of taking away of the convict-petitioner by the RAB personnel. He also deposed that he was the only eyewitness of that fact and none else was present there. None else has come forward to corroborate him on this material point. It is admitted by the D.W-1 that there are a plenty of people who are living and working in the house and shops around the spot house of the convict. It was possible on their part to rush in the spot soon after hearing hue and cry as has been heard by the D.W-1. Thus his statement regarding absence of others at that time is unworthy of trust since it was possible to present some person on hearing hue and cry. He deposed that he heard the hue and cry and came out from his house and saw the occurrence but as per his version none else have heard the hue and cry all though there are hundreds of peoples around the house of the convict-petitioner as has been alleged. The prosecution withheld those witnesses who are the other neighbours and the security guard etc. Non-examination of those material witnesses who were able to corroborate the D.W-1, raises a presumption against prosecution that had they been examined in the case, they would not have supported the defence case and benefit of such defect will go the prosecution.

35. The alleged fact of taking away the convict-petitioner by RAB personnel was taken place on 13.11.2005 at about 11-00 P.M. The convict-petitioner filed a case under section 98 of the Cr.P.C for recovery of those cheques from the custody of the complainant on 25.04.2006. The recital of the aforementioned petition of complaint shows that there is no avertment as to the fact of taking away of the convict-petitioner by the RAB personnel. The convict-petitioner sent a reply on 10.08.2006 to the legal notice duly issued by the complainant. The convict-petitioner also lodged a G.D.E on 04.02.2006 but the fact of taking away by RAB personnel is totally absent in those documents as has been executed by the convict-petitioner from time to time. On perusal of the those document, it appears that all those documents have been executed by the convict-petitioner after the alleged fact of his taking away by RAB personnel but he instead of averting the fact of his taking away by the RAB personnel, he has asserted otherwise. Having considered those fact circumstances and materials on record, I am of the opinion that the convict-petitioner failed to prove their defence plea which appears to be as subsequent embellishment and unworthy of trust.

36. However, I have gone through both the Judgment of the Courts below and seen that both of them have arrived at concurrent finding and same decision regarding such fact. The fact of taking away of the convict-petitioner by RAB personnel is a matter of fact and both the Courts being the Courts of fact have arrived at a concurrent decision regarding such aspect of fact. On perusal of the aforementioned position of evidence, I find that there is no scope to interfere with the concurrent finding of the Courts below.

37. Now the learned Advocate appearing on behalf of the convict-petitioner strenuously argued that the cheques in question are seriously hit by the section 9, 43, 58 of the Negotiable Instrument Act. He adds that by taking a defective cheque, a transferee does not become a holder for value. He further argued that to constitute a person a holder in due course, it is necessary that he must be a holder for consideration and that the instrument must have been transferred to him before it became payable and also that he must be a transferee in good faith.

38. Now the question that falls for determination is whether the cheques in question were obtained by exerting pressure and tainted by fraud or not. But I have already seen that the defence side already failed to prove their case of exerting pressure and unholy influence in course of execution of those cheques. I have also seen that after execution of those cheques the convict-petitioner filed a series of cases and furnished the reply to the legal notice. But no where in those document, he made any statement stipulating the name and designation of the RAB. On the contrary it is evident of those cheques in question were being executed by the convict on sitting in the drawing room of the complainant-respondent no.1.

39. Not only that it has been admitted by the D.W-3 & 4 that they took no recourse of any law enforce or the higher authority of RAB with a view to redress their grievances although they have admitted that they put

their signatures on the agreement. I have already opined that those belated disclosures in this case for the first time are nothing but subsequent embellishment which are unworthy of trust. Not only that the convict-petitioner neither averted this plea of barring the case under section 9, 43, 58 in Courts below nor he took such ground in the present memo of appeal.

40. The Prosecution has come with an allegation that the Zakir Khan and A. Salam (Kochi) are two business partners who have got manpower business and the cheques in question are the security cheques. The agreement in between complainant and Abdus Salam Kochi was signed with a definite stipulation that if Abdus Salam Kochi failed to take the complainant in abroad in that case the complainant will be entitled to encash the cheques as executed and issued by Zakir Hussain, one of the business partners of Abdus Salam Kochi. The complainant while deposing as P.W-1 stated that in case of failure to take him in abroad, the complainant is entitled to have the cheque money encashed. The P.W-2 Billal Khan corroborated to the effect that Zakir Khan executed the cheques in question on sitting in the drawing room of the complainant with a view to secure the money which has been taken against the agreement. Thus, the prosecution has been able to prove the fact of issuing cheques by adducing corroborative evidence. Both the courts of fact have arrived at a concurrent view that the convict-petitioner has failed to prove the fact of taking the convict away to the RAB office and also the fact of execution of the cheques there and taking signature of agreement. Since the Courts of facts endorse the same view and since the shifting of evidence creates no adverse situations, I have no other alternative but to agree with them.

41. Now the learned Advocate appearing on behalf of the convict-petitioner strenuously argued that the security cheques do not fall within the mischief of the section 138 of the Negotiable Instrument Act.

42. A plain reading of subsection (1) of the Section 138 of the Act, 1881 shows that an offence under this section shall be deemed to have been committed, the moment a cheque drawn by a person on an account maintained by him with a bank for payment of any amount of money to another person from out of that account is bounced by the bank unpaid on any of the grounds mentioned therein. Sub-section (1) of section 138 has not made any qualification of the cheque so returned unpaid either post dated given as a security for repayment of the money as alleged by the accused or any other cheque issued by the drawer from encashment currently. The legislature has not made any difference between a post dated cheque issued as security and a cheque issued for encashment currently. I do not see any scope of making any such difference.

43. The offence under this section can be completed with the concentration of a number of facts i.e (i) drawing the cheque (ii) presentation of the cheque (iii) dishonouring of the cheque unpaid by the drawee bank (iv) giving legal notice in writing to the drawer of the cheque demanding payment of the cheque amount and (v) failure to the drawer to make payment within 15 days of receipt of the notice.

44. By no logic, it can be said that the drawer of the cheque does not know the consequence if a cheque is returned unpaid for the reasons as provided in subsection (i) of the section 138 of the Negotiable Instrument Act, 1881.

45. In the instant case, the subject matter is the dishonor of the cheques issued by the convict-petitioner in favour of the complainant which clearly comes within the mischief of this section 138 of the Negotiable Instrument Act, since all the aforementioned points for determinations have been duly completed and complied with as it appears from the record. The Courts below took the right view on the point of fact of the case. I further endorse their views and as such there is no scope to interfere with the order of conviction and sentence. Accordingly, all those rules are liable to be discharged.

46. In the result, these four Rules are hereby discharged.

47. The impugned Judgment and order of conviction and sentence is hereby affirmed.

48. The convict-petitioner is directed to surrender before the trial Court within 30(thirty) days from the date of receipt of this judgment, failing which, the Court below is directed to take necessary action for realizing the amount in accordance with law.

49. Let a copy of this judgment along with L.C.R. be sent to the concerned Court at once.

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